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January 9, 1997

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HAND DELIVERY

William F. Caton
Acting Secretary
Federal Communications Commission
Room 222
1919 M Street, N.W.
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS
COMMISSION
OFFICE OF THE SECRETARY

Re: Notice of Ex Parte Presentation

CC Docket No. 94-54 - Interconnection and Resale Obligations Pertaining to
Commercial Mobile Radio Services

Dear Mr. Caton:

Contemporaneously herewith, on behalf of AT&T Wireless Services, Inc., I am sending the attached letter and paper to Michele Farquhar, Karen Brinkmann, and Nancy Booker of the Wireless Telecommunications Bureau regarding the above-referenced docket.

Pursuant to Section 1.1206(a)(1) of the Commission's Rules, two copies of this written document are attached for inclusion in the public record in the above-referenced docket.

Should you have any questions regarding this matter, please contact me.

Sincerely,



Howard J. Symons

Enclosures

cc: Michele Farquhar
Karen Brinkmann
Nancy Booker

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HAND DELIVERY

Ms. Michele C. Farquhar
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Re: Ex Parte Presentation

CC Docket No. 94-54 - Interconnection and Resale Obligations Pertaining to
Commercial Mobile Radio Services

Dear Ms. Farquhar:

On August 23, 1996, AT&T Wireless Services, Inc. ("AT&T") filed a petition for partial consideration of the Commission's Resale Order in the above-referenced docket. In that pleading, AT&T argued that there was no reason to extend the resale obligations of CMRS providers to include customer premises equipment and enhanced services simply because the equipment and services are offered in bundled packages with Title II services.

On behalf of AT&T, I am enclosing a paper that updates and more fully explains AT&T's position with regard to the Commission's expansion of the resale requirement..

Please feel free to call me if you have any questions regarding this matter. Thank you for considering our views.

Sincerely,



Howard J. Symons

cc: Karen Brinkman
Nancy Booker

CMRS RESALE OBLIGATIONS SHOULD BE LIMITED TO COMMON CARRIER SERVICES

INTRODUCTION

In its CMRS Resale Order, the Commission extended the cellular resale requirement to all broadband CMRS but retained the requirement for only five years.^{1/} The Commission decided to sunset the obligation on the ground that the regulation imposes costs on carriers, which should only be imposed "for so long as competitive conditions continue to render application of the resale rule necessary."^{2/}

Despite its express intent to construe narrowly and sunset promptly the resale obligation, the Commission stated that CMRS providers should generally make available to resellers the same bundled packages of common carrier services, enhanced services, and customer premises equipment ("CPE") that they offer to other customers.^{3/} This apparent expansion of the cellular resale requirement is unnecessary to achieve the Commission's stated objective of preventing evasion of the resale rule because, with or without bundling by facilities-based carriers, Title II services remain available to resellers at reasonable prices.

Extending the resale obligation is inconsistent with the Commission's long-held policy that regulations should be eliminated when competition obviates the need for them. The rapid increase in CMRS competition calls into question the need for any mandatory resale requirement. In any event, there is no basis or need to expand the scope of the resale obligation.

If all new enhanced services and CPE offered with CMRS must be made available to resellers, who can rebrand and market them as their own, CMRS providers will have less incentive to expend the resources necessary to develop these innovative services and equipment. The Commission should promptly reconsider its decision.

I. Extension of CMRS Resale Requirement to the Non-Title II Components of Bundled Packages is Unnecessary

As justification for subsuming non-common carrier services and CPE within the resale rule, the Commission simply stated that to do otherwise "would potentially offer carriers an easy

^{1/} In the Matter of Interconnection and Resale Obligations Pertaining to Commercial Mobile Radio Services, CC Docket No. 94-54, First Report and Order, FCC 96-163 (released July 12, 1996).

^{2/} Id. at ¶ 14.

^{3/} Id. at ¶ 31.

means to circumvent the rule."^{4/} This "solution" is overbroad and entirely unnecessary to prevent evasion of the resale requirement.

The major concern of the resellers is that CMRS providers will offset low CPE prices with high service charges, thereby forcing resellers to purchase basic wireless services at "artificially inflated" prices.^{5/} This fear is unfounded. The FCC itself has found that there is no evidence that bundling of equipment and service leads to higher prices.^{6/} Since that time, the Commission has found that competition for service pricing is intensifying. Because of competition from other providers and commission-based dealers, CMRS carriers are not able to raise the price of services to make up for low equipment charges.^{7/} Moreover, some customers acquire their own equipment from CPE distributors and purchase only telecommunications services from the carrier. Resellers have the ability to purchase the carrier's Title II services under any of these arrangements at reasonable, non-discriminatory prices.

The rapidly changing competitive conditions in the CMRS marketplace similarly obviate the need for expansion of the resale requirement. Already in many markets, resellers may choose between several wireless providers and some entities have chosen wholesale/resale as their principal strategy for offering CMRS. NextWave, for example, recently announced its intention to operate solely as wholesale provider to resellers^{8/} and MCI, through its recently-acquired subsidiary, Nationwide Cellular Service, has agreed to purchase 10 billion minutes of airtime

^{4/} Id.

^{5/} See e.g., Comments of the Telecommunications Resellers Association on Petitions for Reconsideration, CC Docket No. 94-54, filed Sept. 27, 1996, at 12; Opposition of the National Wireless Resellers Association to AT&T Corp.'s Petition for Partial Reconsideration, CC Docket No. 94-54, filed Sept. 27, 1996, at 2-3.

^{6/} Bundling of Cellular Customer Premises Equipment and Cellular Service, Report and Order, 7 FCC Rcd 4028, 4031 (1992).

^{7/} For example, the service dealers used by AT&T Wireless Services, Inc. ("AT&T Wireless") sometimes use a portion of their commissions to reduce the price customers pay for equipment, while still offering low service rates. AT&T Wireless' retail outlets must match both the equipment and service offerings of these dealers to remain competitive.

^{8/} Communications Daily, September 20, 1996, at 2.

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from NextWave in 63 markets.^{9/} Cincinnati Bell also has agreed to buy and resell several billion minutes from NextWave.^{10/}

Because concerns about carriers' ability to engage in price discrimination when they offer bundled packages are misguided, bundling should have no effect on the Commission's general inability to reach non-common services and CPE for purposes of resale regulation. If AT&T Wireless were to offer equipment or enhanced services on a stand-alone basis, clearly they would not be subject to resale.^{11/} It is neither necessary nor proper to regulate equipment and enhanced services under Title II simply because these items are offered in conjunction with common carrier services.

At the same time that the Commission has determined that sunseting the wireless resale obligation is appropriate in light of the anticipated and existing competition from multiple facilities-based providers, it has expanded the obligation in a manner that has the potential to harm consumers and the public interest. Indeed, the likely consequence of the Commission's ruling will be to deter bundling rather than to promote competition, resulting in higher prices and

^{9/} Communications Daily, August 27, 1996, at 2.

^{10/} Communications Daily, August 9, 1996, at 6. This abundance of facilities-based providers and the differing business strategies of carriers also eliminates the need to mandate direct connection between the switches of resellers and facilities-based providers. To the extent such a strategy makes business sense -- and it will to some providers -- it will occur without FCC intervention. Moreover, in the Telecommunications Act of 1996, Congress made clear that direct interconnection is only necessary in the case of incumbent LECs. See 47 U.S.C. § 251(a),(c). The Commission recently codified this determination by providing that other telecommunications providers could satisfy their obligations by interconnecting through the incumbent LEC's facilities. Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Nos. 96-98, 95-185, First Report and Order, FCC 96-325, ¶ 997 (rel. August 8, 1996). In making this distinction, Congress understood that a direct interconnection requirement for non-incumbent providers is unnecessary to promote competition and could potentially harm, both technically and financially, these carriers.

^{11/} The Commission's resale policies apply only to basic communications services. See Petitions for Rule Making Concerning Proposed Changes to the Commission's Cellular Resale Policies, Notice of Proposed Rule Making and Order, 6 FCC Rcd 1719 (1991) (cellular carriers may not impose restrictions on the resale of "common carrier domestic public switched network services, including MTS and WATS switched voice services"); 47 C.F.R. § 22.901(e).

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less innovative offerings. This plainly would be contrary to the pro-competitive objectives of both Congress and the Commission.

II. Requiring Resale of CPE and Enhanced Services Will Reduce Incentives Of Facilities-Based Wireless Providers to Innovate

Over the past several years AT&T Wireless and other CMRS carriers have been preparing for competition by creating new and exciting wireless applications. While the research and development costs for these enhanced services and CPE have been very high, such expenditures will ultimately prove worthwhile -- indeed necessary -- because they will permit AT&T Wireless to distinguish itself from its competitors in the marketplace.

The Commission's decision that all components of bundled packages must be made available to resellers will undermine these efforts by allowing competitors to claim such innovations as their own. While in some circumstances AT&T Wireless could separate its common carrier services from other services and CPE, in many instances unbundling is not technically possible. In those cases, a reseller could take advantage of years of AT&T Wireless' research for and development of enhanced services and equipment by simply paying the going rate and rebranding AT&T Wireless' packages. Similarly, the Commission's decision interferes with carriers' ability to experiment with innovative package pricing and pricing that will be necessary to launch new equipment/services packages. This is an extremely costly way to achieve the Commission's goal of protecting resellers from price discrimination.

CONCLUSION

The Commission itself has acknowledged that there is no need for any mandatory resale requirement in a competitive marketplace. Given the imminent introduction of additional facilities-based wireless service providers, there is certainly no basis for expanding the resale requirement beyond its current limits. To ensure reasonably priced resale in the interim, the Commission does not have to provide resellers with the ability to "mirror" each and every offering of a facilities-based carrier. In the short period prior to its sunset, a simple Title II resale requirement will be more than sufficient to ensure competition in basic services until PCS and SMR carriers are able to participate fully in the marketplace. The Commission's expansion of the resale obligation to include CPE and enhanced services is unnecessary and will discourage CMRS providers from expending funds for research and development, thereby slowing the establishment of the innovative wireless networks envisioned by the Commission.

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